

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

IN THE MATTER OF:

Complainant,

CHICAGO TRANSIT AUTHORITY,

Respondent.

ALS No.: 06-492

Judge William J. Borah

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statutory deadline so the Department could complete its investigation of the charges of discrimination.

3. On March 9, 2006, the Department held a fact finding conference on the matter.

4. On March 9, 2009, the parties agreed in writing to an additional 180 day extension of the statutory dateline.

5. On October 27, 2006, the Department issued its decision dismissing Complainant's Charge of discrimination for lack of jurisdiction.

6. On December 1, 2006, Complainant filed his Request for Review with the Department's Chief Legal Counsel.

7. On December 29, 2009, Complainant filed his Complaint, through his attorneys, with the Commission. The Complaint was not signed under oath or affirmation.

CONCLUSIONS OF LAW

1. Complainant is an individual claiming to be aggrieved by a violation of the Illinois Human Rights Act ("Act").

2. The Commission has jurisdiction over the parties for the purpose of determining whether jurisdiction exists over the subject matter.

3. Section 7A-102(G)(1) of the Act requires the Department, when a Charge is properly filed..." within 365 days thereof or within any extension of that period agreed to in writing by all parties, shall either issue and file a complaint in the manner and form set forth in this Section or shall order that no complaint be issued and dismiss the charge with prejudice without any further right to proceed except ...in fraud or duress."

4. The Department's 365 day period begins running on the date a perfected or verified Charge is filed.

5. Section 7A-102(G)(2) of the Act reads that, "Between 365 and 395 days after the charge is filed, or such longer period agreed to in writing by all parties, the aggrieved party may file a complaint with the Commission, if the Director has not sooner issued a report and

determination pursuant to paragraphs (D)(1) and (D)(2) of this Section. The form of the complaint shall be in accordance with the provisions of paragraph (F). ..”

6. Section 7A-102(F)(1) of the Act requires any Complaint filed with the Commission, whether by the Department or the aggrieved person himself, to be under oath or affirmation.

7. Section 5/7-101.1(D), Requests for Review, tolls the jurisdictional time limit from the date on which the Director's Notice of dismissal is issued to the date on which the order of the Department's Chief Legal Counsel vacating the dismissal is entered.

DISCUSSION

On January 31, 2007, Respondent, Chicago Transit Authority, filed its Motion to Dismiss Complaint of Civil Rights Violation. The Commission set a briefing schedule on February 7, 2007, and Complainant chose not to file a response. Although the Respondent also discusses the underlining claims and substantive law in its brief, the issue addressed here is limited to Respondent's contention that the Commission lacks jurisdiction over the Complaint.

Joseph Kolet, Complainant, filed a perfected Charge of discrimination with the Department on March 4, 2005. The parties entered into two written agreements to extend the statutory timeline of 365 days for both the fact finding conference of the Department and to render its decision. Section 5/7A-102(C)(4) and (G). Complainant had the option to file his Complaint with the Commission between 365 and 395 days after the charge was filed, or 30 days after the agreed extensions. However, once the Department rendered its decision to dismiss his claims for lack of jurisdiction on October 27, 2006, any option by the Complainant to file his Complaint with the Commission was lost. At that point the Director issued "...a report and determination pursuant to paragraphs (D)(1) and (D)(2)..." Id. (G)(2).

After the Department dismissed his Charge for lack of jurisdiction, the Complainant was "... notified that he may seek review of the dismissal order before the Chief Legal Counsel of the Department." Id. (D)(2)(a). Complainant filed his Request for Review on December 1, 2006. It

was his only available course of action. However, while the Request for Review was pending, on December 29, 2006, without authority cited, Complainant filed a Complaint, through his attorneys, with the Commission. Complaint, #2 and #3. It was not under oath or affirmation which is contrary to Section 5/7A-102(F)(1) and (G)(2).

Therefore, the Complaint filed with the Commission on December 29, 2006, is a nullity and should be dismissed, without prejudice, so the Department can assess Complainant's December 1, 2006, Request for Review.

RECOMMENDATION

Based on the foregoing, it is recommended that Respondent's Motion to Dismiss be granted. In that the Complaint filed with the Commission on December 29, 2006, should be considered a nullity, and be dismissed, without prejudice, so the Department can assess Complainant's December 1, 2006, Request for Review.

HUMAN RIGHTS COMMISSION

BY: _____
WILLIAM J. BORAH
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: December 16, 2009